

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-20

April 27, 2009

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: purchase option on LIS

Dear XXXXXXXXXXXXXXX,

You have requested guidance regarding whether the XXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXX LLC ("Company) has responsibility for collecting sales or use tax when a
lessee pays \$1.00 on the expiration of a Lease Intended as Security agreement.

The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

I will initially treat your request as one for a general information letter because the request does not contain the information necessary for a private letter ruling. You may resubmit this request as a request for a private letter ruling.

Issue

Is sales or use tax due when a lessee pays the Company \$1.00 at the expiration of the LIS?

Background

The Company offers its customers a financing option referred to as a Lease Intended

1375 SHERMAN STREET
DENVER, COLORADO 80203

as Security (LIS). The LIS incorporates the terms and conditions of a Master Lease agreement between the company and lessee. The company assumes that the customer is making a purchase of the equipment. Invoices from the vendor name the lessee as the buyer. The customer has paid tax on these purchases and title to the equipment remains with the lessee. The company is the lessor of the equipment and holds a security interest only in the equipment.

Discussion

Colorado law will treat certain leases, often referred to as "Finance Leases," as installment sales rather than a true lease. In these cases, a financing company will purchase goods from the vendor and "lease" the goods to the ultimate consumer. The financing company typically holds title to the goods for the term of the lease as security for its extension of credit to the lessee. The sale from the vendor to the financing company is an exempt wholesale sale and the subsequent "lease" by the financing company to the ultimate consumer is a taxable credit or installment sale. See, Department GIL-2008-23 (General Information Letters can be accessed on the department's website at www.taxcolorado.org > FYI/Publications > Rulings). The purchase of the equipment at the expiration of the lease by the consumer for nominal consideration is subject to tax.

In contrast, when a buyer obtains a loan from a financing company and uses the loan proceeds to purchase goods from a retailer, the consumer is the purchaser and must pay sales tax on the purchase. The financing company does not have any sales tax obligation because it is neither the purchaser nor seller of the goods.

We do not, in the context of a general information letter, make a determination regarding the tax consequence of any particular transaction. If you would like a ruling on the taxability of the transactions outlined in the Master Lease agreement and other documents, you must submit your request as a private letter ruling.

Miscellaneous

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us